IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 8629 OF 2006

Vilas Babulnath Naik through his
constituted attorney holder
Shri Vijay Babulnath Naik
Age 26, years, Adult, Occ:Agriculturist,
R/at: Temghar Pada,
Bhiwandi, Dist. Thane. ..Petitioner

Vs.

1. Bhiwandi Nizampura City Municipal
Corporation
Through its Commissioner
Office at Old S.T.Stand
Kaneri, Bhiwandi, Dist. Thane.

2. Kashinath Panglya Naik,
Age: adult, Occ: R/at Temghar Pada,
Bhiwandi, Dist. Thane. ..Respondents

Mr. Ramesh A. Karale, Adocate, for the petitioner.
Mr. Nitin Jamdar, Advocate, for respondent No.1.

Mr. P.R.Ajunwadkar, Advocate, for Respondent No.2

CORAM: J.H.BHATIA,J.

DATE : 20th September, 2007.

JUDGMENT

1. Rule. Rule returnable forthwith. With consent of the learned Counsel for the parties, the matter is taken up for final hearing.

2. Heard learned Counsel for the parties.

3. The petitioner is the original plaintiff. According to him, in the year 1980, after obtaining necessary permission from the then Grampanchayat, Temghar, he constructed a house admeasuring 30'x 10' at village Temghar. Later on, the said village was merged with Bhiwandi Nizampur City Municipal Corporation, which is respondent No.1. According to him, even tax was assessed by the Municipal Corporation and given house No.721. The land on which the structure stands belongs to respondent NO.2 - Kashinath.

4. The Municipal Corporation issued a notice to respondent No.2 for demolishion of the said structure on the ground that it was an unauthorised construction.

Thereafter the plaintiff filed the suit for declaration and for perpetual injunction. He also filed an application Exhibit 5 for temporary injunction restraining the Municipal Corporation from implementing the notice for demolishion of the house. The application was opposed by the Municipal Corporation. The learned Judge of the trial Court found prima facie case in favour of the plaintiff-petitioner and passed the order of temporary injunction. However, in the appeal preferred by the Municipal Corporation, the learned Additional District Judge, Thane, set aside the order of the trial Court and rejected the application Exhibit 5. Therefore, the original plaintiff has preferred the present petition.

5. It appears that the plaintiff has no documents to show his title over the land on which the structure stands nor he has produced any document to show that he was allowed to make construction on the said plot of land by its owner i.e. respondent No.2. He has produced one letter of permission for construction on the printed proforma of Grampanchayat, Temghar, which purports to bear the stamp of Grampanchayat as well as the signature of the Sarpanch. However, according to the Municipal Corporation, it is a vague document because it does not bear any outward number. It also does not reveal the description of the plot of land on

which the construction is to be made. It appears that the land on which the construction was made by the petitioner belongs to the respondent No.2. According to respondent No.2 also, the construction is unauthorised and illegal. It is contended that either this document is fake or vague permission has ben obtained and, therefore, he cannot maintain that construction. However, it appears that the construction was made in 1980 when it was Temghar Grampanchayat. The documents produced by the petitioner also revealed that the Grampanchayat had assessed House No.301 and since 1980-81 the tax was collected by the Gampandhayat. Not only this, after the merger of the village with the Bhiwandi Municipal Corporation, the Corporation has also given a fresh House No.721 and has assessed the same for tax and the petitioner has been paying the taxes. It is true that if the construction is illegal merely because it is assessed for the purpose of tax, it does not become legal and action for demolition can be taken. However, in the present case, the construction was made when the property was within the area of Grampanchayat which is merged in the Municipal Corporation later on. It is difficult to say at this stage that the documents filed by the petitioner are fake and that the construction was illegal or unauthorised. Taking into consideration the circumstances, in my opinion, it will be necessary to maintain the status quo pending the suit

before the trial Court.

6. In the result, the petition is allowed. The impugned order passed by the Additional District Judge, Thane, is hereby set aside and the order passed below Exhibit 5 in Regular Civil Suit No.1040/2003 is hereby restored. The status quo shall be maintained by the parties pending the suit.

Rule made absolute accordingly.

(J.H.BHATIA,J.)